PIPA | PERSONAL INSOLVENCY PROFESSIONALS ASSOCIATION

BANKRUPTCY SYSTEM AND THE IMPACTS OF CORONAVIRUS

FEBRUARY 2021

The Personal Insolvency Professionals Association (PIPA) welcomes the opportunity to comment on the Discussion paper on The bankruptcy system and the impacts of Coronavirus.

ABOUT PIPA

PIPA is the peak body representing Registered Debt Agreement Administrators (RDAAs). The majority of RDAAs are members of PIPA. PIPA focuses on ensuring its members are educated, professional, ethical and informed. It promotes best practice, fairness and transparency across its membership when dealing with people struggling with unmanageable debt. It works closely with government and in conjunction with Bond University, who have created the only course specific for RDAAs in Australia.

BANKRUPTCY SYSTEM AND THE IMPACTS OF CORONAVIRUS

The Personal Insolvency Professionals Association (PIPA) welcomes the opportunity to provide comment on the discussion paper issued by the Attorney General's Department regarding the bankruptcy system and the impact of coronavirus.

KEY POINTS

The impact of the coronavirus on the Australian economy has been widespread and damaging. The Federal Government in response implemented a number of measures to soften its impact. On 24 September 2020 the Federal Government introduced significant insolvency reform to support small incorporated business with liabilities under a million dollars to continue to trade under the control of directors as they develop a plan to present to their creditors.

This significant reform will allow eligible businesses more control over how they restructure their debts while ensuring they can access 'a simple, cheap and faster means to restructure their debt'. It will allow more businesses to continue trading, meaning better outcomes for the business, their creditors, and their employees.
We applaud and support this long overdue initiative. However, the reform does not address the plight facing the numerous business owners who operate as a sole trader or as a partnership. They equally were affected by the pandemic resulting in economic, financial and often emotional stress.

There are 912, 411 Sole Proprietors and Partnerships[1] operating in Australia and they account for in excess of 55.9% of business. These entities employ just under 5 million Australians.

The Government needs to treat business operators fairly regardless of how they are structured.

The insolvency reforms for incorporated entities announced on 24 September 2020 resemble a debt agreement for small businesses. It therefore makes sense to reconsider the current three-year term on the length of a debt agreement for non-home owners and to adjust all three thresholds to equal the current asset threshold or increase all thresholds. This simple measure would offer a lifeline to sole traders and partnerships who wish to restructure their business rather than having no option other than bankruptcy.

While there may be merit in setting a default period of one year for bankruptcy in certain circumstances, it is important to note that many of the consequences of bankruptcy will extend beyond the one-year timeframe and these consequences impact severely on sole traders and business partnerships ability to continue to trade.

We are not convinced that setting a one-year bankruptcy default period will stimulate business. The personal insolvency system already has a remedy that, with some key adjustments, could achieve the outcome desired by the Government; this is a debt agreement.

[1] Parliamentary of Australia Resource Publication, Small Business sector contribution to the Australian Economy. Report 8th January 2020.

RECOMMENDATIONS

We urge the Government to:

- Increase the term of a Debt Agreement, Part IX *Bankruptcy Act 1966*, to 5 years thus allowing all Australians and not just homeowners, to repay their debt in a sustainable and affordable arrangement, which offers the protection of the Bankruptcy Act.
- Increase the income and debt thresholds for debt agreements to $250,000 or at least match the current asset threshold.
- Make it mandatory for any entity that provides financial advice, guidance, and information to a consumer to be licensed, regulated and a member of an external dispute resolution scheme. This should apply equally to not-for-profit and for-profit entities.
- Allow creditors, which have purchased a debt to vote on the consideration paid for the debt and not the balance owing. This will align a debt agreement with a Personal Insolvency Agreement (PIA).
- Delete Section 40 (1) ha, hb, hc from the *Bankruptcy Act 1966* (The Act). This would mean that lodging a debt agreement is not treated as an act of bankruptcy.
- Allow a debtor to elect to become bankrupt upon the rejection of the debt agreement. Debtors should be entitled to put forward a good faith best offer and if rejected should not have to resubmit the same information in order to become bankrupt

These changes will allow a greater number of Australian to access the benefits and protection of *The Act* without having to file for bankruptcy.

1. DEFAULT PERIOD OF BANKRUPTCY

Question 1: How do current economic circumstances impact the policy setting for a default period of one year bankruptcy?

Case Study 1
George works as a self-employed truck driver and part time as an Uber Driver. He owns a house in Sydney worth $1,192,000 with an outstanding mortgage balance of $1,077, 857.The equity position is around $114,000. *COVID-19 has resulted in a reduction of work hours and consequently income. This means he is unable to make and maintain his credit cards and personal loan payments.* *Should George file for bankruptcy then he and his wife would lose their house regardless of whether the default period was 3 years or one year.*

The current economic circumstances justifies taking positive financial stimulus measures without lowering the essential checks and balances that are necessary for business and community confidence in the financial system. Media reports of business rorting, phoenix companies and unfair treatment of privileged groups does nothing to reassure a nervous community that the Government is in control and that the economy is being prudently managed. Reducing the bankruptcy term from three years to one year would inevitably have a detrimental effect on community confidence without any significant benefit to entrepreneurial activity.
It is inevitable that the current economic circumstances will lead to an increase in the number of bankruptcies. We will only know how many after the Government withdraws all economic stimulus measures.
We believe that the current economic circumstances do not support changing the bankruptcy default period to one year. Reducing the default period will not achieve Government policy goals and will incur significant costs.

Question 2: Have stakeholder views about the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 changed due to the impacts of the Coronavirus?

The Senate Legal and Constitutional Affairs Legislation Committee Report into the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 explored the issues relating to a one-year bankruptcy in detail.
Although the Government was in favour of reducing the term of bankruptcy to one year, the vast majority of industry stakeholders were either opposed to or sceptical of any resulting significant benefit. We do not think that the current economic circumstances has changed this. The main reasons why a one-year term of bankruptcy will have no significant impact on business stimulus are:

- The consequences of bankruptcy are the issue and many of these will be unchanged
- Bankruptcy will be listed on the individual's credit file for at least five years and the NPII for life and this will affect the bankrupt's creditor worthiness
- Overseas travel is not prohibited by bankruptcy but merely requires the trustee's consent
- The bankrupt's business and personal assets will be taken by the Trustee
- Licensing issues are primarily a State Government responsibility.

Question 3. How might a default period of one year benefit debtors with business-related debts such as sole traders?

Case Study 2
Joanne is a subcontractor and has been laid off due to COVID. She owns a house in rural South Australia valued at $204,355, on which she owes $146, 962.71. If she files for bankruptcy she will lose her house and she will have to disclose to everyone she does business with that she is bankrupt. If the default period changes, she will still lose her house. She will however only have to tell everyone she does business with that she is bankrupt for 12 months as opposed to 3 years. However, her creditworthiness will be affected for a five year period and this will prevent her from borrowing.

The introduction of a default period of one year will provide few if any significant benefits to foster entrepreneurialism or sole traders. The Senate Committee report on the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 noted in a number of places (e.g. at 2 .3 and 2.9) that many submitters raise concerns that the Bill would not achieve its stated intention of fostering entrepreneurialism.

Bankruptcy involves the Trustee realising the bankrupt's assets. Joanne in the case study above would lose her home if she filed for bankruptcy. Her mortgage payments are lower than equivalent rental accommodation in the area she resides. Renting a property would therefore put her in greater financial hardship given that the rent is higher than her mortgage.

Joanne's bankruptcy Trustee could sell her business assets in excess of $3,800 thus preventing her from earning an income.

The Bankruptcy Act requires a bankrupt to disclose they are bankrupt when applying for credit. Having disclosed the bankruptcy, it is up to the credit provider to decide whether to advance credit. Creditors that obtain a credit report will be aware of the bankruptcy for a period of five years whether the term of the bankruptcy is three is a one-year. The bankrupt is required to tell suppliers providing necessary stock or ingredients for operating a business that they are bankrupt.

Any bankrupt can apply to their Trustee for permission to travel overseas. Generally, trustees will approve overseas travel when it is necessary for business purposes and when the trust is confident that the bankrupt will comply with their obligations regarding provision of information and payment of contributions.

The requirement that a bankrupt operating a business as a sole trader use their own name rather than a registered business name can inhibit some sole traders in continuing their business. This is one possible area of reform; however, it carries with it the risk that trade creditors dealing with a sole trader using a business name would not be aware that they are dealing with an undischarged bankrupt.

Many professions have restrictions or prohibitions that apply to persons who are currently bankrupt or who have ever been a bankrupt. This is a significant factor affecting sole traders working in those professions (see the Senate Report at 2.15)[2].

An increasing number of licensing agencies are cancelling or refusing licenses to persons who are currently bankrupt or who have ever been a bankrupt. Although most of these licensing agencies are State and Territory entities, some are also Commonwealth entities. This is a significant factor restricting employment opportunities for people involved in industries such as the building industry.

[2] The Senate Legal and Constitutional Affairs Legislation Committee Bankruptcy Amendment (Enterprise Incentives Bill 2017) Bankruptcy Amendment (Debt Agreement Reform Bill 2018) Report March 2018

Question 4: Do stakeholders have views on how the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 could be amended to respond to concerns about the one-year default period being made available to bankrupts for whom such a concession is not a desirable or justified outcome?

The submission of The Australian Restructuring Insolvency & Turnaround Association (ARITA) to the Senate Committee (quoted at 2.10)[3] that:

> *"...among our members who practice in the field of personal insolvency (bankruptcy) there are divided views as to whether this stated goal will be achieved by the reduction of the default bankruptcy period to one year. Apart from scepticism as to the 'untapped entrepreneurialism' which will be engaged by a one-year default period of bankruptcy, registered trustees are more familiar than most with the practices and behaviour of those debtors who will seek to either abuse or 'game the system' of a one-year bankruptcy for their own benefit (and to the detriment of creditors)."*

Further, in the Senate committee report it states that the Attorney General's Department found that it was extremely difficult to draw a distinction between personal and business related bankruptcy (at 2.6)[4]. It would be even more difficult to try to distinguish between one group of bankrupts who should be eligible for discharge after one year and the remainder who must remain bankrupt for three years.

See also the comment of CPA Australia, referred to at 2.17 of the Senate Committee Report [5]that their members do not support a reduction in the default period, citing concerns regarding the potential for abuse and unintended consequences. The possibility of phoenix activity and organised crime taking advantage of the shorter period is also a concern of the Australian Criminal Intelligence Commission (2.37 of the Senate Committee Report)[6].

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[3] ARITA's submission to the Senate Legal and Constitutional Affairs Committee Insert name of report

[4] The Senate Legal and Constitutional Affairs Legislation Committee Bankruptcy Amendment (Enterprise Incentives Bill 2017) Bankruptcy Amendment (Debt Agreement Reform Bill 2018) Report march 2018

[5] ibid

[6] ibid

2. DEBT AGREEMENTS

Question 1: What reforms, if any – either on a temporary basis all more permanently – should be made to the debt agreement system to respond to the Coronavirus?

Debt is a social, economic and psychological issue. There has to be a system to address unmanageable debt which allows a debtor to enter into an affordable, viable and sustainable arrangement to repay their debt and to do so over a defined period of time which is fair and reasonable. And debtors deserve options.

Debt agreements were originally embraced as a socially useful method of allowing debtors to enter into a realistic repayment arrangement with creditors. Prior to the 2019 Reforms debt agreements were a valuable and successful solution for people dealing with unmanageable debt. They allowed thousands of people to repay their debt over a set timeframe and at a given amount. They offered predictability, legal protection and they had to be affordable. Debt agreements have been politicised to the point where they are now actively discouraged by a number of stakeholders. Despite being subject to rigorous legislative and regulatory controls there has been a sustained and well-organised anti-debt agreement campaign run by some financial counsellors and consumer lawyers for years. This campaign together with attacks on the integrity and ethics of registered debt agreement administrators continues.
Regrettably the "debt agreement agenda" has been driven by bias, vested interest and opinion while ignoring facts and evidence.
On 20 September 2018 Christian Porter, the Attorney General, issued a media release[7] to announce the passing of the new laws with the Bankruptcy Amendment (Debt Agreement Reform) Bill 2018. In their submission to the Legal and Constitutional Affairs Committee regarding the Reform the Attorney General's Department stated

> *"The substantial increase in new debt agreements may suggest that many insolvent debtors prefer to come to an arrangement to repay their creditors. The availability of a viable repayment option presents debtors with an alternative to bankruptcy. The debt agreement system also benefits creditors who, on average, receive 59.68 cents per dollar owed under debt agreements, compared to just 1.15 cents per dollar under bankruptcies.... In recognition of the benefits to debtors and creditors of an improved debt agreement system,* ***the Bill aims to preserve and, where possible, expand the system's accessibility".***

The key reform, which was the reduction of the term for non-home owners to three years, has had an unexpected consequences. Rather than "expanding the system's accessibility" debt agreement numbers had declined significantly. Why? Because rates of return offered to creditors over a three-year term are often commercially unacceptable.

The debt and income thresholds for a debt agreement are unrealistic. To be eligible to propose a debt agreement there are thresholds. Currently the unsecured debt threshold is $118,063. The after tax income threshold is $88,547 and the asset threshold is $236,126.[8]

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[7] Media Release 20/9/2018
[8] AFSA threshold issued 20 September 2020

Case study 3

Jane is 53 years old. She has unsecured debt of $124,000. She has after tax income of $82,000. She together with her 76 year old mother own in equal share an unencumber property which they live in. The property is valued at around $370,000.

Jane cannot propose a debt agreement because her unsecured debt exceeds the current debt threshold of $118,063. Bankruptcy is an option although it has consequences for the mother because the Trustee may force the sale of the property.

Jane could propose a Personal Insolvency Arrangement (PIA). Jane's mother is unaware of her financial situation. If Jane decided to proceed with then a formal valuation would have to be undertaken. This would alert her mother about her financial situation.

A PIA is more onerous, complex and costly and it may affect the property and therefore Jane's mother.

If the debt thresholds for a debt agreement were increased to at least match the asset threshold then Jane's situation would have been best resolved by a debt agreement.

Case study 4

Antonie works in construction and is 38 years old. He and his wife live in Sydney and rent a property in the western suburbs. The rent is $650 a week. This is standard rent for Sydney.

Antonie's wife has only worked sporadically for the past 6 months. Covid affected her employment in hospitality.

Antonie after tax income is $89,675 which exceeds the debt agreement income threshold by $1127.45. This precludes him from proposing a debt agreement. He has unsecured debt of $68609.His wife has no debt.

Antoine could file for bankruptcy although this may affect his building licence. He could propose a PIA. Should he do so then it is worth noting that the fees would be in the range of $25,000 to $30,000 or more.

Antoine's options to resolve his debt are severely affected by the debt agreement income threshold. The best and most cost effective solution for Antoine would have been a debt agreement. This would also have been the better outcome for his creditors.

Another unforeseen consequence of the amendments has been the growth of informal debt repayment arrangements. A range of providers offer informal arrangements and many are unlicensed and unregulated. The growth of informal arrangements will continue unfettered.

Case study 5
Ghassan approached an RDAA because he was struggling with unmanageable debt. His unsecured debt was around $33,000 and his after tax income was $55,000. During its investigation into Ghassan's circumstances the RDAA identified that a credit card debt has been sold to a debt purchaser in 2007. At that time the balance owing on the credit card was $33,856. In 2009 the debt purchaser applied for a default judgement. This extended the collection period for the debt by 12 years. The debt purchaser had no contact with Ghassan *When Ghassan obtained a statement from the debt purchaser in November 2020 the debt had increased to $95,263.* *Ghassan had two choices: file for bankruptcy or enter into a repayment plan with his creditors.* *A PIA was not an option because of his income.*

Case study 6
Daniel is a carpenter and broke his arm at work and needed 3 operations over 12 months to repair. Before the accident, he owed CBA approximately $48,000 for a credit card debt. This debt was sold to a Debt Purchaser for a fraction of this amount. The Debt Purchaser emailed Daniel advising his debt had increased to $63,858.35 and offered him to pay $492 per fortnight for the next 10.5 years. This amount totals $134,316. *This is an example of why Debt Purchasers prefer informal arrangements rather than regulated Debt Agreements.*

The Reforms also created two classes of debtors: those with a home and those without a home. These changes were discriminatory and a denial of natural justice to non-home owners because they gift the privilege of time to repay debt to homeowners while penalising non-home owners. This is unfair and unjust.

Case study 7
Elizabeth lives in Sydney, which is a high cost centre. She has after tax income is $65,000. She lives in rental accommodation and her rent is $460 a week or $1993 a month. She has unsecured debt of $85,000. *Jenny lives is Sydney in an apartment she owns. The property is mortgaged and the balance of the mortgage is around $500,000. Her mortgage payments are $2100 a month. She has unsecured debt of $82,000 and her income after tax is $65,000.* *Under a debt agreement, Elizabeth has only three years to repay her creditors whereas Jenny has five years because she is a homeowner.* *It is evident from the above figures that Elizabeth is disadvantaged under the current debt agreement system. Her creditors are equally disadvantaged because the rate of return they will receive will be less than Jenny's because of the reduced timeframe.* *Furthermore, Jenny has the additional benefit of keeping her property.*

We recommend that the debt and income thresholds increase to at least equal the current asset threshold and that the term of a debt agreement for a non-homeowner be extended to 5 years to align with a homeowner.

Question 2: Are there changes that could be made to the debt agreement system to make it more useable for those with business-related debts such as sole traders.

Debt agreements are already utilised by people with business-related debts. Increasing the term and thresholds will make it available to a wider group.

We would recommend changing the wording to exclude Debt Agreements from Section 269 (1) ad and b. [9] This would allow debtors to continue their business without disclosing they are operating a business.

Getting the Australian taxation office to become a model debt agreement creditor would greatly increase their usefulness to businesses. The ATO frequently votes no to debt agreements.

Case Study Alice 8

Alice is 24 years old and comes from a family who do not talk about money. At the age of 22 she was in debt. She felt ashamed about her situation and did not know what to do. She spoke with an RDAA and after exploring multiple options including bankruptcy; hardship; speaking with a financial counsellor etc. she elected to propose a debt agreement that was accepted by her creditors. She felt liberated.

In 2019, her parents admitted they were in financial difficulty and they were forced to sell the family home. They realised around $100,000 from the sale of the property. Their combined unsecured debt was over $200,000.

Her father was self-employed and her mother worked in retail. The family lives in Melbourne.

In 2020 the Covid lockdown meant both her mother and father were receiving JobKeeper only. This increased the pressure imposed by their financial situation.

Alice's mother was adamant that bankruptcy was not an option she wanted to explore. This reaction is common. The family's objective was to save the family business and her mother's dignity.

Alice called the RDAA who administered her debt agreement. The RDAA decided to approach each of the Alice's father and mother's creditors and offer a one-off lump sum payment as full and final settlement of the debt. Few creditors were responsive to the offer.

Creditors were then approached regarding debt waivers given the impact of Covid on both debtors. The exercise was unsuccessful.

At Alice's request the RDAA submitted a debt agreement offer for both her parents. The offer consisted of a lump sum payment to creditors as full and final settlement of the debt with funds used from the sale of the family property.

The offer was accepted and under the terms of the debt agreement all unsecured creditors were bound by the agreement, some of whom were trade creditors.

This case study shows the flexibility of a debt agreement. It also demonstrates that the same creditors react differently when debtors propose an informal arrangement, a debt waiver, or an insolvency arrangement. Essentially creditor behaviour is not consistent.

A benefit of a debt agreement is that creditors know exactly how much they will yield against their outstanding debt whereas under bankruptcy or a Personal Insolvency Agreement the Trustee fees are taken in priority and are subject to the amount of work a Trustee invests in investigating the estate.

In this case the business investigation was straightforward and the family business was saved.
The best outcome was achieved equally for the debtors and their creditors and this should be the key objective of an insolvency system

[9] The Senate Legal and Constitutional Affairs Legislation Committee Bankruptcy Amendment (Enterprise Incentives Bill 2017) Bankruptcy Amendment (Debt Agreement Reform Bill 2018)

Question 3. Should the income, debt, and/or asset threshold amounts for debt agreements be increased? For example, the income and/or debt threshold could be increased to match the current asset threshold of $236,126.80.

Case Study 9
Geoff is a restaurant owner. Due to COVID the business income has been severely affected. He has $124,000 of unsecured. He has an unencumbered car and business assets he needs to continue trading. He does not want file for bankruptcy, as he needs to keep his car and his business. He cannot propose a debt agreement because of his debt level.

Since the commencement of debt agreements, there has been a progressive rise in the standards and reliability of debt agreements due to increased regulation and regulatory activity by AFSA. Compliance is high and the number of offences or regulatory breaches is very low. Creditors have a much greater confidence in debt agreements than when they were first introduced. As a result, it is appropriate that the thresholds be increased to allow more debtors to utilise the protection from bankruptcy offered by a debt agreement.

Low threshold limits exclude debtors who may have a higher level of income or debt or assets who would otherwise benefit significantly from a debt agreement. This may be one of the reasons why fewer sole traders or business operators currently rely upon this insolvency remedy.

Higher threshold limits gives creditors the option to vote in favour of a debt agreement that will provide them with a significantly greater return than they would expect in the event of bankruptcy.

Question 4. Does the impact of the coronavirus give rise to the need to consider the term of a debt agreement?

Case Study 10
Irene has $113, 915 in unsecured debt. Her work hours have reduced due to COVID. She is making extra money driving Uber. She is unable to afford to repay her debts over 3 years at rate creditors will accept in a debt agreement. Her options are to files for bankruptcy or enter into an informal arrangement with her creditors. *Irene owns a vehicle outright worth $16,000. She will lose this in Bankruptcy leaving her unable to work for uber.*

The imposition of a three-year limit on a debt agreement was justified on the basis that it aligned the term of a debt agreement with the term of a bankruptcy. This was a flawed premise for aligning the debt agreement term for a non-home owner to three years because, it should be remembered, that a debt agreement was created to be an alternative to bankruptcy

The discrimination this imposed on debtors who are not homeowners (renters) was unconscionable and the effects are harsh.

By reducing the maximum term of a debt agreement to 3 years, the practical return to creditors has reduced by 40%, which was in many cases give creditors an unacceptably low return. As a result, creditors have rejecting debt agreement proposals that prior to the Reforms would have been accepted. Debt agreement numbers pre-Covid declined by around 40% due to changes in creditor voting.

In its submission to the Senate Committee report (3.14)[10], the Australian Bankers' Association (ABA) stated that

> *"Reducing the period to 3 years will mean one of two things – increased payments meaning fewer debtors will be able to service a debt agreement over the shorter term because the amounts payable will be higher, or lower payment plans which creditors will be less likely to accept because of the reduced amount offered compared to payments made over 5 years. Inevitably, this means more debtors' plans will be rejected with debtors likely to resort to formal bankruptcy, increasing the numbers of bankruptcies."*

This has proven to be correct.

Question 5: What are the possible consequences (unintended or adverse) to making reforms to the debt agreement system in response to the impacts of the Coronavirus?

Broadening the eligibility criteria for a debt agreement will give a greater number of debtors the option of a debt agreement and therefore the ability to avoid bankruptcy and the same time make an affordable and sustainable contribution to their creditors.

It also have an impact on the volume of debts that are sold by creditors to debt purchasing companies. This is to the benefit of debtors as debt purchasing companies are more likely to pursue debtors for payments over many years, sometimes more than a decade.

Question 6: If you support reforms to the debt agreement, should there be a transition period before any reforms take effect?

There is no need for a lengthy transition period before any reforms to debt agreements take place that expand their eligibility as the same procedures and requirements will be applicable.

[10] The Senate Legal and Constitutional Affairs Legislation Committee Bankruptcy Amendment (Enterprise Incentives Bill 2017) Bankruptcy Amendment (Debt Agreement Reform Bill 2018)

3. PERSONAL INSOLVENCY AGREEMENTS

Question 1: Could personal insolvency agreements play a greater role – either on a temporary basis or more permanently – in settling debts for individuals, including those who have business-related debt (e.g. sole traders) who are in financial distress due to the impacts of the Coronavirus?

Personal Insolvency Agreements (PIA) have been little utilised for many years and we do not believe that making minor changes to the requirements for them would be likely to significantly change their uptake by debtors. Their structure is really only suitable to a narrow group of debtors and this would not be easy to broaden.

Question 2: re there barriers to the uptake of personal insolvency agreements (PIA)?

Yes, a PIA is more onerous, complex and costly than a debt agreement.
The debtor is required to pay a significant upfront fee for the Trustee to conduct an investigation without any certainty that the Trustee will support the PIA.
By appointing a controlling Trustee, the debtor effectively hands control over his or her property to the Trustee.
The debtor cannot always accurately predict the outcome of the whether creditors will vote to support the PIA.
There is a risk that the creditors will required the debtor to present a debtor's petition within seven days of the meeting.
A debtor in a PIA is prohibited from managing a company, unlike a debt agreement.

Question 3: Could the processes for establishing personal insolvency agreements be streamlined to make them more attractive or more accessible, particularly for individuals with business-related debt?

The essential elements of setting up a PIA are time-consuming, costly and create uncertainty. Debt agreements have streamlined processes and are more cost-effective than a PIA. It would be simpler to expand the availability of debt agreements.

4. OFFENCE PROVISIONS

Question 1: What new or expanded offence provisions could respond to concerns about the abuse of a one year default period of bankruptcy?

Instead of an ineffective shortening of the term of bankruptcy, the government could implement the suggestions of ASIC regarding possible amendments s.206F Corporations Act relating to bankrupts managing phoenix activity (see the Senate Committee Report at 2.53).

Question 2: What new or expanded offence provisions could respond to concerns about the behaviour of untrustworthy advisers, including pre-insolvency advisers?

We do not believe that the allegations regarding untrustworthy advisers raised by some community legal centres are of significant concern. This is an area that has been investigated thoroughly by AFSA and we consider that AFSA is the appropriate government entity to deal with this issue.

Regards

Richard Symes
PIPA Chair